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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,084	03/16/2006	Cynthia J. Roberts	1227P001A (US)	9769
44564 7590 08/27/2009 BOND, SCHOENECK & KING, PLLC 10 BROWN ROAD, SUITE 201 ITHACA, NY 14850-1248			EXAMINER GHERBI, SUZETTE JAIME J	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 08/27/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/572,084	<b>Applicant(s)</b> ROBERTS ET AL.	
	<b>Examiner</b> SUZETTE J-J GHERBI	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/7/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of Group 1 and claims 1-2 and 4 in the reply filed on 5/4/09 is acknowledged. The traversal is on the ground(s) that the examiner did not mention the category or "surface ablation and intra-stromal ablation". This *is* found persuasive by the examiner and the election as read in claim 4 (intra-stromal ablation) has been elected by the applicant. Currently claim 1 is generic. Claims 3 and 5-31 have been cancelled.

Should applicant traverse on the ground that the species are not patentably distinct, applicant **should submit evidence** or **identify such evidence now of record** showing the species **to be obvious variants or clearly admit on the record that this is the case**. In either instance, if the examiner finds one of the species unpatentable over the prior art, **the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.**

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141 The requirement is still deemed proper and is therefore made **FINAL.**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Tamayo et al. 6,969,386. Tamayo et al. discloses the invention as claimed comprising: A method for enhancing ocular accommodation (see 1:14-21), comprising: making a pre-determined biomechanical alteration of a subject's corneal structure outside of an optical zone (see 3: 11:15; 4:10-23 *this limitation is met because Tamayo et al. discloses altering the annular zone or the cornea and not the central zone/optical zone*) of the cornea; and using the biomechanical alteration (*this is done by the laser beam L*) to create an inflection region (the inflection region as shown in figure 5 by ablation 100 also see 6:1-4) in the corneal structure, resulting in enhanced corneal accommodative power . Tamayo et al. further states that the peripheral ablations are performed on the stromal tissues of the cornea (see 5:46-48)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tamayo et al. 6,969,386. Tamayo et al. discloses that s part of the determination of the patients presbyopia a complete optometric and ophthalmologic examination is performed on the eye including measurement of the corneal curvature, pupillary size anterior chamber depth, and topography mapping (see 5:29-35). However, Tamayo et al., however does not specifically state making *another* topologic measurement of the comeal/scleral region of the subject's cornea in a non-accommodative state; and determining a difference value between one and another topologic measurements. It is obvious to one having skill in the art that Tamayo is providing *an example* of the procedure of a 55 year old male (see 5:28-30) and in that example topography is used for measurement purposes, therefore it would be within the realm of obviousness to take first and second measurements in order to determine the correct values or the cornea and thus this modification is within the scope of the Tamayo et al. invention.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUZETTE J-J GHERBI whose telephone number is (571)272-4751. The examiner can normally be reached on Maxi-Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SUZETTE J-J GHERBI/  
Primary Examiner, Art Unit 3738  
19 August 2009